

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL PEALS,

Defendant-Appellant.

UNPUBLISHED

February 15, 2005

No. 251406

Wayne Circuit Court

LC No. 02-003303-01

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

MEMORANDUM.

Defendant appeals as of right from his convictions of felon in possession of a firearm, MCL 750.224f(1), and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The police retrieved a handgun from defendant's pocket during a traffic stop. A firearms expert testified that, in its current condition, the gun was inoperable, but that if certain parts were replaced it could be made to fire one round.

A person convicted of a felony may not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in Michigan. MCL 750.224f(1). The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.* at 600.

The current inoperability of a firearm is not a defense to the charge of felon in possession of a firearm, *People v Brown*, 249 Mich App 382, 384-385; 642 NW2d 382 (2002), or to the charge of felony-firearm, *People v Thompson*, 189 Mich App 85, 86; 472 NW2d 11 (1991).

Although defendant's gun was inoperable in its then-existing condition, it could have been made capable of firing at least one shot. The firearm properly served as the basis for defendant's convictions.

Trial counsel did not render ineffective assistance by failing to request that the trial court read CJI2d 11.6¹ to the jury. The evidence did not show that the firearm defendant carried was totally unusable as a firearm and could not easily be made operable. Counsel was not required to make a meritless request. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Affirmed.

/s/ Karen Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio

¹ This instruction states that it is not unlawful to carry a gun that is "totally unusable as a firearm and cannot be easily made operable."